(2)

Carson L. Brown #173226, King 14

VS 97-5330

R. Williams, et al.,

RECEIVED
JUL 15 1997
OFFICE OF THE CLERK
SUPREME COURT, U.S.

"Motion for Leave To Proceed in forma Pauperis."

5

The petitioner Carson Lynn Brown #173226, King Zulu a African descent (hereinafter petitioner) asks leave to file the attached petition for a writ of Certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has previously been granted leave to so proceed in "United States District Court for the Western District of Michigan Southern Division on October 4, 1996. However, Nazi Racist German, Judge Richard A. Enslen Issue an order Denying Request to proceed in

39 pp

"Motion For Leave To proceed in forma Pauperis." in RE: Brown-AKA King Zulu -v- R. Williams, et al., et., c/r. Ct. of Appeals no. 97-1407 (cont)

page Two (2)

forma pauperis on February 25, 1997, As a mean of prostitution, Conspiracy And organize crime, with Defendants, and of the Court officials. mostly To Deny indigent affiant/petitioner "Access to the Courts". as many times in the past.

Further Deponent/Affiant Saith Naught

Executed on: July 1st, 1997 /S/Carson Lynn Brown #172226, King Zulu
King Zulu

Subscribed and sworn to before me
This 1st day of July 1997
[illegible]
Notary Public Here:

DENNIS A. GRAMM
Notary Public, Alger County, MI
My Commission Expires Apr. 13, 1999

Respectfully submitted
/S/Carson Lynn Brown #172226, King Zulu
/Carson Lynn Brown #172226, King Zulu
/P. O. Box 600
/Munising, Michigan 49862
/petitioner in pro. se

AFFidavit: support of a motion f Leave To Proceed in Forma Pauperis

97-5370

I, Carson Lynn Brown #172226, King Zulu, a African Jew, being first duly sworn, deposes and says that I am the petitioner in the above-entitled Case, that in Support of my motion for leave to Proceed in forma Pauperis, I state that because of my poverty I am unable to pay the costs of this case or to give Security therefor; and that I believe I am entitled to redress.

5

I further swear or Declare, that the responses which I have made to the question and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1.) Are you presently employed? yes ___ no ✓.

petitioner Last employment was May 1983, part time

page Two(2)

at a "mc Donald's Resturuant" on Wealthy street S.E. Grand Rapids, Michigan 49506.

2.) Have you received within the past twelve months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends or other sources? yes ___ no ✓.

3.) Do you own any cash or checking or savings account? yes ___ no ✓.

4.) Do you own any real estate, stocks, bounds, notes, autombiles, or other Valuable property (excluding ordinary household furnishings and clothing)? yes ___ no ✓.

5.) List the persons who are dependent upon you for

page Three (3)

Support and State your relationship to those persons.

I Understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Futher Deponent/Affiant Saith Naught

Executed on: July 1st, 1997 /s/ Larry Brown #123226 King Zulu
King Zulu

Subscribed and sworn to before me this 1st day of July, 1997

Notary

my Commission expires:

DENNIS A. GRAMM
Notary Public, Alger County, MI
My Commission Expires Apr. 13, 1999

no. 97-5370

In The

Supreme Court of The United States

Carson Lynn Brown, #123226, King Zulu, ,
petitioner

VS.

R. Williams, et al.,
Respondents.

Petition For Writ of Certiorari
To The United States Court of Appeals
for the Sixth Circuit

Petition for writ of Certiorari

Respectfully submitted
S/ Carson L Brown #123226, King Zulu
Carson Lynn Brown, #123226, King Zulu
P.O. Box 600 Munising, Michigan 49862
petitioner in pro. se

Questions Presented

(A.) Was, the District Court Judge Richard A. Enslen. And 6th Cir. Court of Appeals Clerk, Leonard Green, bias Against petitioner, And for the adverse parties (Respondents)?

petitioner Would Answer: "Yes!"

Respondents And court officials. would Answer: "no!"

(B.) Was, District Court Judge Enslen's order Dated 3/31/92 Dismissing, this Action, in Violation of Ex post facto-Clause?

petitioner Would Answer: "yes!"

Respondents And Court officials would Answer: "no."

(C.) Should, petitioner's forma pauperis Status, been Denied by Judge Enslen, after U.S. magistrade Judge Hugh W. Brenneman Jr., order Dated 10/3/96, Granted petitioner's Right To Proceed in forma Pauperis?

Petitioner would Answer: "no!"

Respondent And Court officials would Answer: "yes!"

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Appendix-A order/opinion of the Court of Appeals, reported, As Sixth Circuit no. 97-1407. which is marked As petitioner's Legal Exhibit-G.

Appendix-B Judge Ensen's order Dated: 4/24/97.

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Regarding filing And Docket fees, which is marked As Legal Exhibit-E.

Appendix-C Judge Ensen's order Dated: 3/31/97. Dismissing this Action Without prejudice. which is marked As petitioner's Legal Exhibit-E.

Appendix-D. Judge Ensen's order Dated: 2/25/97. Denying Request To proceed in forma Pauperis, which is marked As petitioner's Legal Exhibit-D.

Appendix-E U.S. magistrate Judge-Hugh W. Brenneman, Jr.'s order Dated: 12/26/96. which is marked as petitioner's Legal Exhibit-C.

Appendix-F. U.S. magistrate Judge Brenneman's order Dated: 10/23/96. for Payment of initial Partial filing fee and To Show Exhaustion of Administrative Remedies. which is marked As petitioner's Legal Exhibit-B.

Appendix-G. U.S. magistrate Judge Brenneman. Jr.'s

Index To Appendices (Continued)

order dated: 10/3/96 Granting petitioner motion To Proceed in forma Pauperis, which is marked As Legal Exhibit-A

Appendix-H Amendment I to United States Constitution.

Table of Authorities Cited

Cases: page no.s:

Liljeberg V. Health Serv. Acquisition Corp., — U.S. — 108 S. Ct. 2194, 2203, 108 L. Ed. 2d 855 (1988); aff'g, 796 F. 2d 796 (5th Cir. 1986) ---- 11
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1167 (E.D. Mich. 1994) — — — — — 12
Roller V. Cavanaugh, 984 F. 2d 120 (4th Cir. 1993), Cert. (denied) dismissed, — U.S. — 114 S. Ct. 593, 126 L. Ed. 2d 409 (1993) — — — 12
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no _____

In The Supreme Court
of The
United States of America

Carson Lynn Brown, #173226 King Zulu,
petitioner,

VS.

R. Williams, et al.,
Respondents.

Petition For Writ of Certiorari To the
United States Court of Appeals
For The Sixth Circuit

petitioner, Carson Lynn Brown #173226 King Zulu, a African Jew, in pro. se, respectfully prays that a writ of certiorari issue to review the Judgment and opinion of the United States Court of Appeals for the Sixth circuit

refusing To place this Appeal before a Three panel of Judges as Required by Title 28 U.S.C. §46. And Rule 35 of the federal Rules of Appellate Procedure; And 6th Cir. Refusing To Grant petitioner's motion forma pauperis on Appeal, pursuant To 28 U.S.C.S §1915 And fed. R. App. P. 24, on a Conspiratorial bais with Respondents. For the sole purposes of "Denying indigent petitioner Access to the courts."

Opinions/Order Below

The opinion/order of the Court of Appeals is reported as Brown AKA King Zulu vs. R. Williams, et al. 6th cir.

no. 97-1407. And is marked As Legal Exhibit-G, and Listed in Appendix-A to this Petition. The Unpublished written orders/opinions of the District Court Judge Richard A. Enslen And U.S. Magistrate Judge Hugh W. Brenneman, Are marked As Legal Exhibits A Through E, and Appear/Listed in Appendixs B Through G.

Jurisdiction

The Court of Appeals' order/opinion in this matter was filed on June 26, 1997. This Supreme Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

Constitutional And Statutory Provisions involved

Amendment I to the United States Constitution is set forth in Appendix-H.

Statement of The Case

The United States District Court, Western District of Michigan Southern Division, had Jurisdiction pursuant to Title § 1915 (28 U.S.C. § 1915) & 28 U.S.C. § 1341-42. This is a "42 U.S.C. § 1983." Civil Action Complaint brought by a state prisoner Carsen Lynn Brown, # 123226, King Zulu, a African Jew, illegally incarcerated in michigan Department of Corrections (MDOC), petitioner

has allege Respondents (Prison employees), has Violated his first, fourth, Sixth, eighth, and fourteenth Constitutional Amendment Rights by subjecting him To Denial of Access to Courts, by psychiatric medications in petitioner's food To Drug him To Sleep, To Deny petitioner Access to the Courts also To Impede Religious Studies; Sabotoging/Delaying petitioner Access to Carbon papers, which is needed To prepare Legal pleadings, which cause Direct prejudice, petitioner missing Several Court Deadline Dates in his State Court Litigations; Denying petitioner Access to Law Library materials; Respondents withhold incomming and outgoing Legal, political and Reli-

onal mail, without affording petitioner a Notice of Intent, Hearing or any Due process; see complaint at pages 8-15. Denial of Access to the Courts by Violating Statutes, on a Conspiratorial basis with 8th Judicial Circuit Court Judge/Defendant Charles W. Simon, JR., See petitioner's Complaint pages 16-18, Denial of Access to the Courts by Respondent withholding half of petitioner's Legal mail/material see Complaint at pgs. 18-19. And withholding petitioner's $50 which State Court Judge ordered MDOC To Reinburse petitioner; Respondent instructed a Known Homosexual employee To throw petitioner's food-Tray on the cell Floor, and Maliciously place petitioner on

food-loaf, in Retaliation of his Religious Beliefs. Re-
taliation of petitioner being a Heterosexual, and Liti-
gations and Grievances filed against Respondents. See
Complaint pgs 20-21. Medical/Deliberate indifference
to petitioner Serious and minor Medical needs; Attempt
murder, by poisonous substances in petitioner's food.
Drinking wates, over-the-counter medication, Venti-
liation, See complaint pgs 23-25; forgering misconduct
Reports, in Retaliation of prior Grievances and Liti-
gations. And Denial of Religious materials by chaplain
See Complaint. pages 25-27. extreme Acts of Hom-
o sexual harassment.; Grievance-Restriction, As a

means of Retaliation; Respondents paid Aids controlled
inmate informant To Assault petitioner with feces.
On October 3, 1996, U.S. Magistrate Judge Hugh W. Bren-
neman Jr., Granted petitioner's motion To proceed in
forma pauperis". See Legal Exhibit-A, Annexed. on
October 23, 1996, Brenneman, Gave a order for petitioner
To pay Partial filing fee, petitioner was only able to
pay 30¢ of the Required 83¢ See Legal Exhibit-B,
Brenneman order Dated: 10/23/96 See Legal Exhibit-C,
Brenneman order Dated: 12/26/96. On february 25, 1997,
Nazi Racist German Judge Richard A. Enslen, issued
a Order Denying petitioners Request To proceed in forma

pauperis" and Thus over riding U.S. mag.-Brenneman. without Just Cause see Legal Exhibit-D. Judge Ensken is/was Bias against Petitioner As set forth in "Judicial misconduct Complaints" and misconduct Review" numbers: 93-6-372-42, 97-6-372-23, 97-6-372-02 filed in office of the Circuit Executive in Sixth circuit Court of Appeals.; on 3/31/97 Ensken issued an order Dismissing this Complaint without prejudice see Legal Exhibit-E. Ensken Knew indigent petitioner Could not pay $120.00 filing fee, or any part of it except 30¢, which was paid.; Legal Exhibit-f. Judge Ensken issue order Denying petitioner informa pauperis on appeal, As Ensken's Sole intentions was/are To Deny African-Jew petitioner Meaningful Access to the Courts, on a Conspiratorial Basis with Respondents And other Court officials. Lastly. Legal Exhibit-G. Was illegal order issue by the 6th Circuit clerk, contrary to 28 U.S.C § 46. As only a Three panel court of Appeals Judges Can make the determination of order Dated June 26, 1997, not a clerk of the Court. See (28 U.S.C. § 46) 28 U.S.C. § 46.

Reason for Granting The Writ

Certiorari should be granted for the follow reasons:

(A.) Judge Richard A. Enslen, was obviously Bias against petitioner And for the Adverse parties (Respondents) As clearly Revealed in "Judicial misconduct Complaints" And misconduct Reviews." #97-6-372-23, 97-6-372-02 93-6-372-42, And many more Documents file din the federal courts And MOOC. See Liljeberg V. Health-

Serv. Acquisition Corp. — U.S. —, 108 S. Ct. 2194, 2203, 108 L. Ed. 2d 855 (1988) aff'g, 796 F. 2d 796 (5th Cir. 1989), goal of Section §144 and §455 is to promote public Confidence in the Judicial System by avoiding even the appearance of partiality. See also United States V. Story, 716 F. 2d 1088, 1091 (6th Cir. 1983); (B.) Judge Enslen's

order Dated: March 31, 1992 Marked as Legal Exhibit-E, is in Direct Violation of the Ex post facto clause- See Canales V. Gabcyk, 844 F. Supp. 1167 (E. D. Mich. 1994); Roller V. Cavanaugh, 984 F. 2d 120 (4th cir. 1993), Cert. dismissed. — U.S. — 114 S. Ct. 593, 126 L. Ed. 2d 409 (1993). As Enslen can not apply any Law to petitioner's Litigation that came out after petitioner's Complaint was already filed before the Law, that is Ex post facto.; (C.) Court (District court & Sixth Circuit), Cannot Use petitioner's indigency Status To Deny petitioner Access to the Courts See Bounds V. Smith, 430 U.S. 817, 821, 97 S. Ct.

1491, 1494 (1972); And (D.) Attorney should as a matter of Goodfaith be Appointed To Represent Indigent petitioner." See "Annexed Copy of" Certificate establishing Prisoner Account Activity." See also Hughes V. Joilet Correctional Center, 931 F.2d 425 (7th Cir. 1991).

Conclusion

For the reasons set forth above, a writ of Certiorari should issue to review the illegal order of Sixth Circuit Court of Appeals Clerk in this matter.

Dated: July 1st, 1997

Respectfully Submitted
S/Carson Brown #123226, King 2d-4
Carson Lynn Brown #123226, King 2d-4
P.O. Box 600
Munising, Michigan 49862
petitioner in pro. se

2' If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and the matter be remanded to the Court of Appeals for re-determination in light of this court's opinions in Bounds, Supra and Roller, Supra.

Rec. 01/10/96 Sydschula

Legal Exhibit - A of Carson Lynn Brown. #173226, King Zulu Legal Exhibit - A

COPY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

96 OCT -4 PM 4:53

CLERK
DIST. OF MICH
BY

CARSON LYNN BROWN,

Plaintiff,

Civil No. 1:96-cv-804

v.

ORDER TO PROCEED IN FORMA PAUPERIS

R. WILLIAMS, ET AL,

Defendants.

_____/

IT IS ORDERED that plaintiff in the above-entitled proceeding may commence this action without prepayment of fees or costs or security therefor. The Court must nevertheless require payment of the entire filing fee in installments, in accordance with the Prison Litigation Reform Act of 1995, PUB. L. No. 104-134, 28 U.S.C. § 1915(b)(1). Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States should the plaintiff prevail.

IT IS FURTHER ORDERED that plaintiff shall serve upon defendants or, if appearance has been entered by an attorney, upon the attorney, a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to defendants or the attorney(s). Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Dated: 10/3/96

Hugh W. Brenneman, Jr.
United States Magistrate Judge

Rec 10/22/96 Legal Exhibit - B of Carson Lynn Brown. #173226, King Zulu Legal Exhibit - B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

96 OCT 23 PM 2:42

CLERK
DIST. OF MICH
BY

CARSON LYNN BROWN,

Plaintiff,

Case No. 1:96-CV-804

v.

Hon. Richard Alan Enslen

R. WILLIAMS, et al.,

Defendants.

_____/

ORDER FOR PAYMENT OF INITIAL PARTIAL FILING FEE AND TO SHOW EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Court has granted Plaintiff leave to proceed in this case in forma pauperis. 28 U.S.C. § 1915(a). Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, a prisoner allowed to bring a civil action in forma pauperis must pay the full civil action filing fee of $120.00. 28 U.S.C. § 1915(b)(1). An initial filing fee must be collected. The initial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1).

After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall place a hold on twenty percent of the preceding month's income credited to the prisoner's account each time the amount in the account exceeds $10.00. When the balance of the full filing fee (the full filing fee minus the initial

Legal Exhibit - C (cont.) of Carson Lynn Brown, #173226, King 2 Lu 4

payment) has been collected, the agency having custody of the prisoner shall forward the money to the Court. If the prisoner is released before the full filing fee is collected, the amount collected shall be forwarded to the court. Twenty percent of the average monthly deposits in the prisoner's account for the six-month period immediately preceding the filing of the complaint is $.83. Therefore,

IT IS ORDERED that within 30 days hereof, Plaintiff shall pay to the Clerk the sum of $.83 as the initial partial filing fee.

IT IS FURTHER ORDERED that the Michigan Department of Corrections shall place a hold on Plaintiff's prisoner account as indicated above, until the full filing fee is paid.

The Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, provides that no action shall be brought with respect to prison conditions under 42 U.S.C. § 1983, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility, until such administrative remedies as are available are exhausted. On April 18, 1995, Michigan Department of Corrections Grievance Policy PD 03.02.130 was granted full certification by the Department of Justice.

Plaintiff shall forthwith establish exhaustion of administrative remedies by submitting copies of the grievances filed, and of all responses to the grievances and appeals through Step 3. Alternatively, Plaintiff may establish exhaustion by submitting a statement which sets forth in detail the grievances filed and all responses received through Step 3.

IT IS FURTHER ORDERED that the proceedings are hereby stayed for 30 days to await the submission of the ordered information regarding the administrative disposition of Plaintiff's grievances and payment of the initial filing fee.

Legal Exhibit - C (cont.) of Carson Lynn Brown, #173226, King 2 Lu 4

Plaintiff's failure to comply with this order will result in dismissal of this case without prejudice.

IT IS SO ORDERED.

Entered: 10/23/96

Hugh W. Brenneman, Jr.
U.S. Magistrate Judge

Rec'd 1/16/97 Legal Exhibit-C of Carson Lynn Brown, #173226, King Zulu
Legal Exhibit-C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARSON LYNN BROWN,

Plaintiff,

v.

R. WILLIAMS, et al.,

Defendants.

_____/

Case No. 1:96CV804

Hon. Richard Alan Enslen

ORDER

This is a prisoner civil rights action. By order entered October 23, 1996, (docket no. 3), the court ordered plaintiff to pay an initial partial filing fee in the amount of $0.83, pursuant to 28 U.S.C. §1915(b)(1). Subsequent to that order, plaintiff has alleged he does not have sufficient funds to pay the initial partial filing fee (docket no. 4). To permit the court to determine whether plaintiff has or had sufficient funds to pay the initial partial filing fee, plaintiff shall, on or before January 15, 1997, file a certified copy of the trust fund account statement (or institutional equivalent) which reflects the plaintiff's account balance as of October 23, 1996, and all activity in the account thereafter, up to and including November 23, 1996. Failure to file the statement shall be deemed an admission that sufficient funds existed in plaintiff's account to timely pay the initial partial filing fee.

DONE AND ORDERED this 26 day of December, 1996.

Hugh W. Brenneman, Jr.
U.S. Magistrate Judge

Rec. 3/06/96 Sgt. Henderson
E. Jackson certificate
Legal Exhibit-D of Carson Lynn Brown #173226, King Zulu
Legal Exhibit-D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

CARSON LYNN BROWN

Plaintiff,

Case No. 1:96-CV-804
Hon. Richard Alan Enslen

R. WILLIAMS, et al.,

Defendants.

_____/

ORDER DENYING REQUEST TO PROCEED *IN FORMA PAUPERIS*

This is a civil rights claim brought by a state prisoner pursuant to 42 U.S.C. § 1983. In the complaint, plaintiff alleges that all forty-eight defendants have conspired to violate his constitutionally guaranteed rights through numerous actions ranging from denying him access to the courts to sabotaging his laundry. The court preliminarily granted plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (docket no. 3) and ordered plaintiff to pay an initial partial filing fee in the amount of $0.83, which plaintiff has yet to pay.

It has come to the court's attention that plaintiff was not entitled to proceed *in forma pauperis* under 28 U.S.C. § 1915(g), as amended, which provides:

> In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The three-strike rule "revokes prisoners' privileges to proceed [*in forma*

(cont) Legal Exhibit-E, of Carsen Lynn Brown #173226, King Zulu.

pauperis] if they have, on three prior occasions during detention, had an action or appeal dismissed as frivolous, malicious, or for failing to state a claim." *Adepegba v. Hammons*, No. 95-31249, 1996WL 742523 at *1 (5th Cir. December 31, 1996). It was added to the statute by the Prison Litigation Reform Act of 1995, Title VIII of Pub. L. No. 104-134, (the "Act"), which was signed into law on April 26, 1996, and is considered effective the same date.[1] Since the instant action was commenced by the filing of the complaint on October 4, 1996, there can be no question that the Act applies to this case.

Nevertheless, because the predicate "prior dismissals" occurred before April 26, 1996, and therefore this case **may** "implicate[] a federal statute enacted after the events in suit . . ." *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994), it is necessary to determine if dismissals occurring before the Act may be counted in applying the three-strike rule. To this end, the analysis outlined by the Supreme Court has been employed to determine if 28 U.S.C. § 1915(g) is impermissibly retroactive:

> [T]he court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Landgraf, 511 U.S. at 280.

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[1]*Id.*; *see also Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1990) ("It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment.").

(cont) Legal Exhibit-E, of Carsen Lynn Brown, #173226, King Zulu

This court is not the first to address this question. At least one circuit court of appeals and one district court have concluded that using pre-Act frivolous complaint dismissals to deny *in forma pauperis* status pursuant to 28 U.S.C. § 1915(g) is permissible under the *Landgraf* analysis: *Green v. Nottingham*, 90 F.3d 415 (10th Cir. 1996); *Lyon v. Vande Krol*, 940 F. Supp. 1433 (S.D. Iowa 1996).[2]

The first step of the *Landgraf* analysis requires an examination of Congress's express language as to the reach of the statute. Neither the Act in general, nor § 1915(g) specifically, provide express guidance as to whether Congress intended courts to look to pre-Act frivolous complaint dismissals in tallying the three strikes. Congress certainly could have indicated that it wanted courts to look at dismissals occurring both before and after the Act or dismissals occurring only after the Act; it did not do so. Absent express Congressional guidance, the court must proceed to the second step of the *Landgraf* analysis.

At the second *Landgraf* step, the court must consider whether application of the statute would have a prohibited retroactive effect. In that regard, the Court stated:

> A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment, . . . or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. . . . Any test of retroactivity will leave room for disagreement in hard cases . . .. However, retroactivity is a matter on which judges tend to

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[2]Several courts have concluded that other sections of the Act may be applied to cases pending on April 26, 1996, under the *Landgraf* analysis. *See e.g. Covino v. Reopel*, 89 F.3d 105 (2d Cir. 1996) (fee payment obligation, 28 U.S.C. § 1915(a)); *Thurman v. Gramley*, 97 F.3d 185 (7th Cir. 1996) (same); *Marks v. Solcum*, 98 F.3d 494 (9th Cir. 1996) (dismissal provisions, 28 U.S.C. § 1915(e)(2)). Indeed, the Fifth Circuit concluded that the three-strike rule of 28 U.S.C. § 1915(g) even applied to appeals pending on April 26, 1996. *Adepegba v. Hammons*, No 95-31249, 1996 WL 742523 (5th Cir. December 31, 1996).

(Cont.) Legal Exhibit - E, of Carolyn Lynn Brown, #173206, King Zulu

> have "sound . . . instincts" . . . and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.

Landgraf, 511 U.S. at 269-270 (citations and footnote omitted). The Court also supplied three specific examples of retroactive effects: "whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed . . .." *Id.* at 280. Each of the considerations identified by the Court (*i.e.* **new** legal consequences, fair notice, reasonable reliance, **settled** expectations, impact on **existing** rights, **increased** liabilities, and **new** duties) require examination of the law prior to April 26, 1996.

Even before the Act, the Sixth Circuit recognized that *in forma pauperis* status was a privilege, not a right. *Weaver v. Toombs*, 948 F.2d 1004, 1008 (6th Cir. 1991); *see also Loum v. Underwood*, 262 F.2d 866, 867 (6th Cir. 1959) ("The right to proceed in forma pauperis . . . is not an unqualified one. The statute provides that the Court 'may authorize' the commencement . . . of a suit without prepayment of fees and costs."). Significantly, the Sixth Circuit has consistently held that the privilege might be restricted or even revoked if it had been previously abused by the filing of frivolous *in forma pauperis* complaints.[3] Under the

[3]*See e.g. In re Bo Guess*, No. 95-3334, 1995 WL 613771 (6th Cir. October 18, 1995) (affirming district court's revocation of the privilege); *Guess v. Collins*, Nos. 95-3920, 95-3921, 1996 WL 112404 (6th Cir. March 12, 1996) (court revoked privilege); *Sherrills v. Kerek*, No. 90-3311, 1990 WL 145573 (6th Cir. October 4, 1990) (court restricted privilege by requiring payment of a limited filing fee even if *in forma pauperis* status granted); *Rodman v. Shiplevy*, No. 89-3945, 1990 WL 41876 (6th Cir. April 11, 1990) (same); *Long v. Kentucky*, No. 89-6051, 1990 WL 6880 (6th Cir. January 30, 1990) (same); *May v. Challenger Communications Systems, Inc.*, No. 89-3499, 1989 WL 134211 (6th Cir. November 8, 1989) (court permanently revoked plaintiff's pauper status and authorized the district court to enter a similar order); *Maxberry v. Securities and Exchange Commission*, 879 F.2d 222, 223-224 (6th Cir. 1989) (same).

(Cont.) Legal Exhibit - E, of Carolyn Lynn Brown, #173206, King Zulu

circumstances, it is certainly difficult to comprehend how a prisoner whose *in forma pauperis* complaints have been dismissed, as frivolous or otherwise, several times, could suggest that § 1915(g) unsettles expectations, impacts existing rights, frustrates reasonable reliance, increases liabilities, or creates new legal consequences or duties. Moreover, a prisoner simply cannot suggest that he did not have fair notice that repeatedly filing frivolous *in forma pauperis* complaints could result in denial of *in forma pauperis* status. Accordingly, § 1915(g) is not impermissably retroactive even though its operation may depend upon dismissals prior to its enactment.

Plaintiff has brought several actions in the federal courts that have been previously dismissed on the grounds that they were frivolous. These actions include, *Brown v. McGinnis*, 2:92-CV-154 (dismissed as frivolous by order entered May 10, 1994); *Brown v. Nobles*, 1:93-CV-795 (dismissed as frivolous by order entered May 10, 1994), *Brown v. Koehler*, 2:88-CV-242 (dismissed as frivolous by order entered May 10, 1994), *Brown v. Howard-Palmer*, 1:93-CV-516 (dismissed as frivolous by order entered November 23, 1993), *Brown v. Olivieri*, 1:93-CV-205 (dismissed as frivolous by order entered April 20, 1993), *Brown v. Jason*, 1:93-CV-129 (dismissed as frivolous by order entered February 25, 1993), *Brown v. McGinnis*, 1:93-CV-105 (dismissed as frivolous by order entered March 4, 1993), and *Brown v. Waters*, 1:91-CV-95 (dismissed as frivolous by order entered May 10, 1994). Although three prior dismissals as frivolous are sufficient to preclude *in forma pauperis* status, plaintiff has accumulated eight such dismissals. Moreover, court records show that plaintiff's claims have been dismissed, for various reasons, in numerous actions in addition to those listed above.

There is a saving provision in the Act if a prisoner is under imminent danger of

(Cont.) Legal Exhibit-E, of Carson Lynn Brown, #173206, King Zulu

serious physical injury. There is no credible allegation in the complaint or other pleadings, however, to suggest this is the case here. Accordingly, plaintiff may not proceed *in forma pauperis* under the statute. Therefore, upon reconsideration, the court vacates its prior orders granting *in forma pauperis* status and requiring payment of initial partial filing fees and orders plaintiffs to pay the balance of the filing fee, $120.00, within fourteen days of the date of this order. Failure to timely pay the filing fee will result in dismissal of this action.

IT IS SO ORDERED.

Entered: 2-25-97

Richard Alan Enslen
Chief U.S. District Judge

(Rec. 4/07/97 Sgt. Henderson)

Legal Exhibit-E, of Carson Lynn Brown, #173206, King Zulu

Legal Exhibit-E

FILED (K)
97 MAR 31 PM 12:07
RONALD C. WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICH
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARSON LYNN BROWN

Plaintiff,

Case No. 1:96-CV-804
Hon. Richard Alan Enslen

R. WILLIAMS, et al.,

Defendants.

ORDER

This is a civil rights claim brought by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff sought leave to proceed *in forma pauperis*; his request was initially granted. By order entered February 25, 1997 (docket no. 7), upon reconsideration, the court denied plaintiff's request to proceed *in forma pauperis* based on 28 U.S.C. § 1915(g) and ordered plaintiff to pay the entire filing fee of $120.00 within fourteen days. The order further informed plaintiff that failure to timely pay the filing fee would result in dismissal of this action. Plaintiff has failed to timely pay the required filing fee; accordingly, this action is dismissed without prejudice.

IT IS SO ORDERED.

Entered: 3-31-97

Richard Alan Enslen
Chief U.S. District Judge

Rec'd 5/06/97 Sgt. Nord

Legal Exhibit - F of Carson - Lynn Brown, #173226, King Zulu

Legal Exhibit - F

FILED (R)

97 APR 24 PM 3:12

RONALD C. WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARSON LYNN BROWN

Plaintiff,

Case No. 1:96-CV-804
Hon. Richard Alan Enslen

R. WILLIAMS, et al.,

ORDER REGARDING FILING AND DOCKET FEES

Defendants.
_____/

This is a civil rights claim brought by a state prisoner pursuant to 42 U.S.C. § 1983.

By order entered February 25, 1997 (docket no. 7), the court denied plaintiff's request to proceed *in forma pauperis* based on 28 U.S.C. § 1915(g). Plaintiff has filed a notice of appeal of the court's February 25, 1997 order and has sought leave to proceed on appeal *in forma pauperis* (docket no. 9). The filing and docketing fees for a notice of appeal total $105.00. Pursuant to 28 U.S.C. § 1915(g), plaintiff may not pursue his appeal *in forma pauperis*; accordingly, plaintiff's motion is DENIED and plaintiff must pay the entire amount of the fees within thirty days of this order. If plaintiff fails to pay the fees, the Court of Appeals may dismiss his appeal for want of prosecution.

A copy of this order shall be certified by the Clerk to the Court of Appeals. Fed. R. App. P. 3(d).

IT IS SO ORDERED.

Entered April 24, 1997

Richard Alan Enslen
Chief U.S. District Judge

-15-

Rec'd 6/30/97 Sgt. Tasula

Legal Exhibit - G of Carson - Lynn Brown, #173226, King Zulu

Case No: 97-1407

Legal Exhibit - G

FILED

JUN 26 1997

LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

O R D E R

CARSON LYNN BROWN

Plaintiff - Appellant

v.

R. WILLIAMS, Chaplain; KEITH EDWARDS; CARMEN D. HOWARD-PALMER; L. MCCLUIRE; ELIZABETH M. KLIENHARDT; WENDEE JONES, R.N.

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by 6/16/97 .

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 8(b), RULES OF THE SIXTH CIRCUIT

Leonard Green, Clerk

Leonard Green